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Government of Sarawak v Shirley Saroja Noel

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HIGH COURT (MIRI) — SUIT NO 22–21 OF 2004(MR)
STEPHEN CHUNG J
28 FEBRUARY 2014

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Civil Procedure — Action — Res judicata — Whether defendant's acquittal on previous criminal charges amounted to estoppel or res judicata in subsequent civil suit based on same facts — Whether neither conviction nor acquittal in previous criminal case could be used as evidence to establish liability or otherwise of party in later civil suit — Whether plaintiff proved beyond reasonable doubt allegation of fraudulent concealment of monies against defendant — Whether plaintiff sufficiently pleaded particulars of fraud such that defendant not prejudiced

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At all material times to this action, the defendant was employed by the plaintiff as a receiving cashier at the lands and surveys department at Miri. The plaintiff alleged that between January of 1999 and September of 2001, the defendant collected quit rent and land premium payments from the public totalling RM311,725.13 over 175 transactions but concealed her receipt of that sum from the plaintiff until the same was discovered during an internal audit exercise at the department. The plaintiff sought judgment for the RM311,725.13 which it claimed the defendant failed to pay despite repeated requests. Prior to the instant action, and based on the same facts, the defendant was charged in the sessions court for misappropriating a larger amount than was claimed in the instant action but following her discharge not amounting to acquittal in that court, the High Court on appeal acquitted and discharged her of all charges that she faced in the sessions court. In the instant matter, the defendant, inter alia, denied all allegations against her in the plaintiff's claim and contended that the allegation that she had fraudulently concealed or misappropriated the plaintiff's monies was the result of a defective audit process as well as a defective computerised revenue collection system at the lands and surveys department. She also contended that the plaintiff failed to plead particulars of fraud she had allegedly committed. The defendant counterclaimed for arrears of monthly salary, bonuses, salary increments, housing benefits and other emoluments and also for general, exemplary and aggravated damages for not being reinstated to her employment, following her interdiction, despite the High Court having acquitted her of all previous charges.

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Held, allowing the claim in the sum of RM306,842.47 and dismissing the counterclaim:

(1) As fraud was alleged in the plaintiff's pleaded case, the burden of proof on the plaintiff was one of beyond reasonable doubt. On the evidence, the plaintiff had proved its case against the defendant beyond reasonable doubt while the defendant failed to raise any reasonable doubt on the plaintiff's case. The court agreed with the findings of the audit carried out that the defendant had collected the monies in question, kept those sums and failed to hand them over to her superior ('PW1') to be banked in. She had unlawfully retained those monies for her own use. There was nothing in the evidence to contradict or raise any doubts on the findings of the audit that it was the defendant who was responsible for the unlawful transactions as set out in Appendices A, B and C annexed to the amended statement of claim (see paras 20, 44, 50 and 52).

(2) Based on the records in the daily attendance books, the defendant was not working as receiving cashier on 16 February 2000, 18 February 2000 and 8 June 2000 and therefore could not have collected or kept the respective sums of RM1,049.40, RM968.30 and RM2,864.96 attributed to her as itemised in the appendices concerned. Hence, those three sums had to be deducted from the claimed amount of RM311,725.13 (see para 51).

(3) There was no merit in the defendant's complaint that the plaintiff failed to plead particulars of the alleged fraudulent concealment. In Appendices A, B and C, the plaintiff had set out the 175 impugned transactions carried out by the defendant. It had pleaded that those transactions were discovered in the audit and during the trial it had led evidence of the alleged fraudulent concealment and unlawful retention of the monies collected by her. From the pleadings, the defendant was not taken by surprise and did not complain that she had been prejudiced; neither did she apply to strike out/dismiss the plaintiff's case for failure to plead particulars of the alleged fraudulent concealment (see para 21).

(4) The previous criminal proceedings against the defendant did not constitute res judicata or estoppel and was not an issue in this trial. Previous criminal proceedings could not constitute res judicata with regard to civil proceedings arising out of the same facts. A conviction or acquittal in a criminal case could not be used in evidence to establish the liability or otherwise of a party in a civil action (see para 10).

[Bahasa Malaysia summary

Pada masa material tindakan ini, defendan berkhidmat untuk plaintif sebagai juruwang penerima di Jabatan Tanah dan Ukur di Miri. Plaintif mendakwa bahawa antara Januari 1999 hingga September 2001, defendan mengutip cukai tanah dan bayaran tanah premium daripada orang ramai berjumlah RM311,725.13 lebih 175 transaksi tetapi menyembunyikan penerimaannya terhadap jumlah wang itu daripada plaintif sehingga perkara yang sama telah didapati semasa latihan audit dalaman di jabatan. Plaintif memohon

penghakiman untuk jumlah RM311,725.13 yang mana ia mendakwa defendan gagal membayar walau pun diminta berulang kali. Sebelum tindakan ini, dan berdasarkan fakta yang sama, defendan telah dipertuduh di mahkamah sesyen untuk penyelewengan sejumlah wang yang lebih besar daripada yang dituntut dalam tindakan ini tetapi berikutan pelepasan tidak dibebaskan di mahkamah itu, Mahkamah Tinggi di peringkat rayuan membebaskan dan melepaskannya daripada kesemua pertuduhan yang dipertuduh ke atasnya di mahkamah sesyen. Dalam perkara ini, defendan, antara lain, menafikan kesemua dakwaan terhadapnya dalam tuntutan plaintif dan berhujah bahawa dakwaan bahawa dia telah secara fraud menyembunyikan atau menyeleweng wang plaintif adalah akibat daripada kecacatan proses audit dan juga kecacatan sistem kutipan hasil berkomputer di Jabatan Tanah dan Ukur. Dia juga menegaskan bahawa plaintif gagal untuk memplidkan butiran fraud yang didakwa telah dilakukan olehnya. Defendan menuntut balas bagi tunggakan gaji bulanan, bonus, kenaikan gaji, faedah perumahan dan lain-lain emolumen dan juga untuk ganti rugi am, teladan dan teruk kerana tidak dikembalikan ke pekerjaannya, berikutan penahanan kerjanya itu, walau pun Mahkamah Tinggi telah membebaskanya daripada semua pertuduhan sebelum ini.

Diputuskan, membenarkan tuntutan dalam jumlah RM306,842.47 dan menolak tuntutan balas:

(1) Oleh kerana fraud telah didakwa dalam kes diplidkan oleh plaintif, beban pembuktian adalah ke atas plaintif adalah melampaui keraguan munasabah. Pada keterangan, plaintif telah membuktikan kesnya terhadap defendan melampaui keraguan munasabah manakala defendan gagal untuk menimbulkan keraguan munasabah dalam kes plaintif. Mahkamah bersetuju dengan dapatan audit yang dijalankan bahawa defendan telah mengutip wang yang dipersoalkan, menyimpan wang tersebut dan gagal untuk menyerahkannya kepada pegawai atasan (PW1) untuk dimasukkan ke dalam bank. Dia telah secara salah menyimpan wang tersebut untuk kegunaannya sendiri. Tiada apa dalam keterangan yang bertentangan atau menimbulkan keraguan atas dapatan audit bahawa ia adalah defendan yang bertanggungjawab untuk transaksi yang menyalahi undang-undang seperti yang dikemukakan dalam di Lampiran A, B dan C dilampirkan kepada pindaan pernyataan tuntutan (lihat perenggan 20, 44, 50 dan 52).

(2) Berdasarkan kepada laporan di dalam buku kehadiran harian, defendan tidak bertugas sebagai juruwang penerima pada 16 Februari 2000, 18 Februari 2000 dan 8 Jun 2000 dan oleh itu tidak boleh mengutip atau menyimpan jumlah masing-masing sebanyak RM1,049.40, RM968.30 dan RM2,864.96 dibayar kepadanya, seperti yang diperincikan dalam lampiran berkenaan. Maka, ketiga-tiga jumlah perlulah ditolak daripada jumlah dituntut sebanyak RM311,725.13 (lihat perenggan 51).

(3) Tiada merit dalam aduan defendan bahawa plaintif gagal untuk memplidkan butiran dakwaan fraud penyembunyian. Dalam Lampiran A, B, dan C, plaintif telah mengemukakan 175 transaksi dipersoalkan dijalankan oleh defendan. Ia telah memplidkan bahawa transaksi-transaksi didapati dalam audit dan sewaktu perbicaraan ia telah membawa kepada keterangan terhadap dakwaan fraud penyembunyian dan peyimpanan wang yang menyalahi undang-undang yang dikutip olehnya. Daripada pliding, defendan tidak diserang secara mengejut dan tidak membuat aduan bahawa dia telah diprejudiskan; tidak juga dia memohon untuk membatalkan/menolak kes plaintif untuk kegagalan memplidkan butiran dakwaan fraud penyembunyian (lihat perenggan 21).

(4) Prosiding jenayah sebelumnya terhadap defendan bukanlah merupakan res judicata atau estopel dan tidak menjadi isu dalam perbicaraan ini. Prosiding jenayah sebelumnya tidak boleh menjadi res judicata berkaitan dengan prosiding sivil yang timbul daripada fakta yang sama. Satu sabitan atau pembebasan dalam kes jenayah tidak boleh digunakan sebagai keterangan untuk membuktikan liabiliti atau sebaliknya kepada pihak dalam satu tindakan sivil (lihat perenggan 10).]

Notes

For cases on res judicata, see 2(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 236–238.

Cases referred to

ASEAN Security Paper Mills Sdn Bhd v CGU Insurance Bhd [2007] 2 MLJ 301; [2007] 2 CLJ 1, FC (refd)

Ahmad Najib bin Aris v PP [2009] 2 MLJ 613, FC (refd)

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and Another Appeal [1995] 2 MLJ 770; [1995] 3 CLJ 639, CA (refd)

Caine and others v Palace Steam Shipping Company [1907] 1 KB 607, CA (refd)

Hock Hua Bank Bhd v Leong Yew Chin [1987] 1 MLJ 230; [1987] 1 CLJ 126, SC (refd)

Miller v Minister of Pensions [1947] 2 All ER 372, KBD (refd)

Nasri v Mesah [1971] 1 MLJ 32, FC (refd)

Noel Kenneth Davidson v Firm Corp Sdn Bhd [1994] 2 MLJ 40; [1994] 2 CLJ 637, HC (refd)

Pet Far Eastern (M) Sdn Bhd v Tay Young Huat & Ors [1999] 5 MLJ 558; [1999] 2 AMR 2533, HC (refd)

Quality Concrete Holdings Bhd v Classic Gypsum Manufacturing Sdn Bhd & Ors [2012] 2 MLJ 521; [2012] 5 CLJ 33, CA (refd)

Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 3) [2010] 2 MLJ 141; [2010] 1 CLJ 429, FC (refd)

Yong Tim v Hoo Kok Chong & Anor [2005] 3 CLJ 229, FC (refd)

Legislation referred to

Evidence Act 1950 s 90A

Saferi bin Ali (JC Fong and Mohd Adzrul bin Adzlan with him) (State Attorney-General's Chambers) for the plaintiff.
RJ Noel (Voon Lee Shan with him) (RJ Noel & Co) for the defendant.

Stephen Chung J:

[1] The defendant was and is an employee in the public service of the plaintiff, holding the post of administrative assistant (Grade N9). The defendant was at the material times performing the duties of a receiving cashier at the Lands and Surveys Department, Miri (L&S).

[2] In para 3 of the amended statement of claim, the plaintiff pleaded that between 7 January 1999 and September, 2001, the defendant collected and received quit rents and land premium in the course of her employment amounting to RM311,725.13. Although the plaintiff only referred to Appendix A, the particulars of these sums collected and received by her were set out in Appendix A, Appendix B and Appendix C respectively which are annexed to the amended statement of claim.

[3] In para 4 of the amended statement of claim, the plaintiff pleaded that the defendant had intentionally or fraudulently concealed her receipt of the sum from the plaintiff until the same was discovered during an audit at Lands & Surveys, Miri by the internal audit unit in the Chief Minister's Department. The plaintiff pleaded that despite repeated requests and reminders the defendant failed and refused to pay the sum to the plaintiff.

[4] In para 6 of the amended statement of claim, the plaintiff pleaded that it was entitled to claim the said sum as money had and received or retained wrongfully. In the premises the plaintiff prayed for judgment to be entered against the defendant for the sum of RM311,725.13 with interest at 8% pa from the date of the action till date of full payment.

[5] The facts showed that the defendant was charged for misappropriating RM443,952.95 belonging to the plaintiff in the Miri Sessions Court. On 12 December 2005 she was discharged not amounting to acquittal on the charges made against her. On 26 September 2007, on appeal, she was discharged and acquitted of all the charges made against her. On 11 May 2004, the plaintiff had filed an action to recover the sum of RM443,952.95 against the defendant. On 16 June 2011 the plaintiff filed the amended writ and statement of claim to reduce the sum claimed against the defendant to RM311,725.13 only. Although the plaintiff prayed for judgment to be entered for the lump sum of

RM311,725.13, there were 175 transactions alleged to have been committed by the defendant and the plaintiff has the burden to prove each of these 175 transactions against the defendant.

[6] In her amended defence and counterclaim, save that the defendant was an officer in the public service of the plaintiff until her interdiction or suspension from official duty, the defendant denied the plaintiffs allegations against her. The defendant denied that at the material times she was working as a receiving cashier and in fact she was not in Miri but was sent by her superior to other branches in Bintulu, Kapit, Kota Samarahan and Limbang to perform her duties. The defendant denied that she had received and kept the alleged sums or had intentionally or fraudulently concealed the sums from her employer.

[7] The defendant claimed that the plaintiff had wrongfully interdicted her from her employment and had failed and refused to reinstate her to her job after the High Court at Miri had on 26 September 2007 discharged and acquitted her of all charges against her. The defendant pleaded that the conduct of the plaintiff in refusing to reinstate her despite the courts' decisions was arbitrary, oppressive and had unlawfully deprived her of her emoluments.

[8] The defendant counterclaimed against the plaintiff for all arrears of emoluments due to her from 18 February 2003 including her monthly salary, bonuses, salary increments and housing benefits and also for general, exemplary and aggravated damages and costs.

[9] The first issue is whether the previous criminal proceedings against the defendant in which she was acquitted and discharged of the charges against her amounted to an estoppel or res judicata in this action. It was not disputed that the defendant was discharged and acquitted of the offences for misappropriation of government revenues from the L&S, Miri amounting to RM443,952.95.

[10] However, it has been held that criminal proceedings do not constitute res judicata as regards civil proceedings arising out of the same facts: *Caine and others v Palace Steam Shipping Company* [1907] 1 KB 607. It has also been held that a conviction or acquittal in a criminal case should not be used in evidence in a civil suit to establish the liability or otherwise of a party in the civil action:

Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 3) [2010] 2 MLJ 141; [2010] 1 CLJ 429. Therefore the previous criminal proceedings against the defendant do not constitute res judicata, cannot become an estoppel and is not an issue in this trial.

[11] The next issue is what is the plaintiffs cause of action as pleaded in this suit. The plaintiff submitted that its cause of action against the defendant is based on a claim for money had and received or the tort of conversion ie the wrongful retention of money belonging to the plaintiff. The plaintiff cited several cases including the case of *Pet Far Eastern (M) Sdn Bhd v Tay Young Huat & Ors* [1999] 5 MLJ 558; [1999] 2 AMR 2533 where it was held that conversion is now known as a claim for money had and received.

[12] It was submitted that a claim for money had and received lies where a defendant has received money or other property convertible into money of the claimant under such circumstances that he is obliged by the ties of natural justice and equity to refund it. It was submitted that the action is, therefore, in principle one which rests on a promise to pay, either actual or imputed by law and is now viewed as a restitutionary claim based on unjust enrichment: see *Atkin's Encyclopedia of Court Forms In Civil Proceedings* (2nd Ed) Vol 27(2), 2008.

[13] The plaintiff submitted that based on its pleadings, it is trite law that the standard of proof required in civil cases is on the balance of probabilities: see *Noel Kenneth Davidson v Firm Corp Sdn Bhd* [1994] 2 MLJ 40; [1994] 2 CLJ 637, *Miller v Minister of Pensions* [1947] 2 All ER 372.

[14] The plaintiff then submitted that it has established the essential elements of the claim based on money had and received namely, (a) that the defendant received or collected the sum claimed of RM311,725.13 as per the evidence of PW4; (b) as already admitted by the defendant, this sum belonged to the plaintiff being revenue or money paid to the plaintiff; and (c) that the defendant could not in conscience retain the money as this would be unjust enrichment.

[15] On the contrary, the defendant submitted that the plaintiff had pleaded that she had intentionally or fraudulently concealed her receipt of the said sums or any part thereof from the plaintiff until the same was discovered in the course of an internal audit exercise at the Lands and Surveys Department, Miri conducted in late 2001. It was submitted that throughout the trial, based on the pleadings, the plaintiff has the burden of proving that the defendant did receive, embezzled and intentionally or fraudulently concealed each and every one of the 175 sums of money listed in Appendix A, B and C which sums added up to RM311,725.13.

[16] The defendant submitted that it is trite law that where fraud is alleged, the fraudulent conduct must be distinctly alleged and distinctly proved and the allegations of fraud must be specifically pleaded with full particulars. It was submitted that it is plain and obvious from the amended statement of claim

A that the plaintiff has not set out the particulars of fraud: see *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and Another Appeal* [1995] 2 MLJ 770; [1995] 3 CLJ 639, *Quality Concrete Holdings Bhd v Classic Gypsum Manufacturing Sdn Bhd & Ors* [2012] 2 MLJ 521; [2012] 5 CLJ 33.

B **[17]** The defendant submitted that the plaintiff has the burden of proving its case beyond reasonable doubt where there are allegations of fraud in civil proceedings such as misappropriation of money or criminal breach of trust or embezzlement and not on a balance of probabilities, see *Yong Tim v Hoo Kok Chong & Anor* [2005] 3 CLJ 229.

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[18] A cause of action is the entire set of facts that give rise to an enforceable claim which if traversed, the plaintiff must prove in order to obtain judgment: see *Nasri v Mesah* [1971] 1 MLJ 32, *Hock Hua Bank Bhd v Leong Yew Chin* [1987] 1 MLJ 230; [1987] 1 CLJ 126.

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[19] Based on the pleadings, although the plaintiff submitted that its cause of action is for the sum of RM311,725.13 as money had and received or retained wrongfully by the defendant as pleaded in para 6 of the amended statement of claim, the money had and received however was due to the intentional or fraudulent concealment or acts of the defendant as alleged. In para 4 the plaintiff has specifically pleaded these facts that the defendant had intentionally or fraudulently concealed her receipt of the said sum and which was only discovered by the audit. These facts as pleaded in the para 4 constituted a cause of action of fraud of concealment committed by the defendant against the plaintiff.

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[20] Based on the pleadings, the plaintiff's cause of action against the defendant is not only for money had and received but also for the intentional or fraudulent concealment of the money which she had collected and retained unlawfully. Therefore, based on the pleaded case of the plaintiff, where there is an allegation of fraud, the burden of proof on the plaintiff is one of beyond reasonable doubt: see *ASEAN Security Paper Mills Sdn Bhd v CGU Insurance Bhd* [2007] 2 MLJ 301; [2007] 2 CLJ 1.

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[21] Although the plaintiffs did not set out any particulars of the fraud or fraudulent concealment of the receipts of the money collected by the defendant, the plaintiff had in the three Appendixes referred to the 175 transactions carried out by the defendant which the plaintiff alleged that the defendant had intentionally concealed and wrongfully retained those sums. The plaintiff had pleaded that these unlawful transactions were discovered in the audit. The plaintiff had during the trial led evidence of the alleged fraudulent concealment of the money collected by the defendant and the alleged unlawful retention of the money collected by her. From the pleadings of

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the parties, the defendant was not taken by surprise and had not complained that she had been prejudiced as a result. Further, the defendant did not apply to strike out or to dismiss the plaintiff's case for failing to plead the particulars of the alleged fraudulent concealment. Therefore, there is no merit on this complaint.

[22] The evidence showed that PW1 was employed by the L&S, Miri since 1976. In 1997 he became the supervisor of the revenue section of the L&S, Miri. He testified that on 20 March 2000, the defendant, Vivian Lee Swee Hong, Ginang Radu and Johari bin Katon, who were employees of L&S, Miri, were formally appointed to the revenue section as receiving cashiers by the superintendent of the L&S, Miri although they had been working as receiving cashiers prior to this date (see the daily attendance books).

[23] PW1 testified that the duties of receiving cashiers were to collect the land rent, land premium and other fees relating to land and land transactions. At the end of each day the cashiers had to count and tally the moneys collected and handed over the moneys collected to him to be lodged into the bank and he had to print out the daily cash transaction report (DCTR) at the end of each day.

[24] PW2 testified that he is an analyst programmer employed by SAINS, which is owned by the plaintiff. In August, 1988, the revenue collection system of the L&S Department was being computerised and PW2 was attached to the L&S Department to implement the system. The revenue collection system used an on-line payment programme (Cashtran.exe) to collect all related payments including land rents, premium, deposits, credit bills and miscellaneous fees.

[25] PW2 testified that, under the systems, each landowner was issued with a land rent booklet for each parcel of land which they owned. The land rent ledger recorded the title registration number (TRN) of each parcel of land which would be used and referred to in all transactions at the revenue section. In order to pay the annual land rent, the landowner must bring the booklet to the relevant revenue collection counter of the L&S Department eg Kuching, Sibu or Miri, for the payments to be collected and the acknowledgement of payments would be machine-printed in the booklet. He said the printing in the booklet included the date of payment, receipt number in sequence generated by the system and the amount paid.

[26] PW2 testified that the programme stored the payment details which included date of payment, receipt number, amount paid, type of fees paid, batch number, sequence number, payment method ie by cash, cheque or postal order and the user ID of the cashier in the database. All payments collected

were listed, added up and printed in the daily cash transaction report (DCTR) at the end of each day. The cash, cheques and postal orders collected on each day must tally with the figures in the DCTR of each day. The system also included a rectification programme, land rent and premium posting programme and approval and reversal programme.

[27] The defendant, PW1 and the other receiving cashiers had been trained to use the revenue collection system. In fact the defendant was well versed with the system that she had been sent to the other branches such as Kapit, Bintulu, Kota Samarahan and Limbang to teach the staff at these branches on how to use the system.

[28] PW4 and her colleagues audited the account of L&S, Miri in 2001. PW4 testified that she discovered that a sum amounting to RM311,725.13 was missing. She testified that this sum was collected and received by the defendant, was acknowledged in the land rent books but were not recorded or did not appear in the DCTR. She testified that some of the amounts acknowledged in the land rent books were in excess of those shown in the DCTR. She testified that the defendant had unlawfully retained this sum.

[29] PW4 testified that during the audit she and her team examined 73 land rent books obtained from the landowners for verification as a result of the audit. PW4 testified that the audit verified that these payments were not machine-printed but were acknowledged manually in handwriting. She testified that the sums posted in the land rent ledgers were not supported by genuine receipts issued by the L&S, Miri but were fictitious receipts or receipt numbers. She said the payments collected and recorded in the land rent books via these handwritten receipts were not accounted for nor shown in the DCTR.

[30] PW4 testified that the sums recorded in the DCTR for each day collected, issued with machine-printed receipts and paid into the designated bank accounts of the plaintiff must tally. PW4 testified that from the audit, the amounts particularised in Appendix A and Appendix B were not accounted for in the DCTR and were not paid into the said bank account of the plaintiff and that the sums shown in Appendix C were not accounted for.

[31] The plaintiff submitted that PW4's findings on the irregularities have been set out in Appendix A, Appendix B and Appendix C and in pp 8 to 276 of WSP3. It was submitted that the cogency of her evidence was not in any way affected or diminished during her lengthy cross-examinations. It was submitted that during cross-examinations she was able to explain any perceived discrepancies brought up by the defence with reference to Appendices A, B and C. The plaintiff submitted that PW4 maintained her findings that the amounts claimed were embezzled by the defendant.

[32] The defendant testified that the plaintiff's claim against her was initially for RM443,952.95, at the commencement of the action in 2004. She said that seven years later, on 16 June 2011, the plaintiff decided to reduce its claim against her amounting to RM311,725.13 only, a deduction of nearly 30%, due to further investigations by PW4. The defendant submitted that this raised serious doubts and the credibility of the audit carried out.

[33] The defendant testified that she had no knowledge of the amounts claimed against her and she denied committing any act of concealment either fraudulently or intentionally of the said sums or any part thereof while she was a servant of the plaintiff. She testified that at the material times she was sent to other branches in Kapit, Bintulu, Kota Samarahan and Limbang to carry out her duties and she was not in Miri on those dates.

[34] The defendant testified that the computerised revenue collecting system operating at the L&S, Miri had been manipulated and or tampered with or had been hacked by persons unknown. She also testified that the system had suffered a theft of passwords, sharing of passwords and or other security information by persons unknown to her by using her password or ID so that she was blamed that she had intentionally or fraudulently concealed her receipts of the said sums. The defendant testified that she never gave any handwritten receipts for payments for land rents. The reversal of entries in the collection system could only be done by PW1 and by officers of SAINS at the L&S, Miri.

[35] She also testified that there were human errors or mistakes committed by the internal audit, that there were human errors or mistakes in the entry of data into the computerised revenue collection system, that the computerised revenue collecting system was defective in its recording and storing of the information, which had misled the auditors into concluding that it was the defendant who had committed the acts complained of.

[36] The plaintiff's claims against the defendant are summarised and set out in Appendix A in respect of land rents purportedly collected and wrongfully retained by the defendant via handwritten receipts issued by the defendant. The plaintiff submitted that the defendant used fictitious receipts or receipt numbers in collecting the land rents and premium. The sums set out in Appendix A amounted to RM140,919.10.

[37] The plaintiff's claims against the defendant are summarised and set out in Appendix B in respect of land rents purportedly collected and officially acknowledged in the land rent booklets but were unlawfully retained and not banked into the designated bank account of the plaintiff. The sums set out in Appendix B amounted to RM151,458.74.

[38] The plaintiff's claims against the defendant are summarised and set out in Appendix C in respect of collections recorded in the land rent booklets which exceeded the amounts purportedly recorded in the daily cash transaction reports (DCTR). The plaintiff submitted that the defendant unlawfully kept the difference between the two sums which amounted to RM19,347.29.

[39] During the trial the defendant had objected to some of the documents to be tendered as exhibits. PW3 was called to tender the documents produced by the plaintiff for the trial. She testified that she was and still is the manager of the computer centre of L&S, Miri. She was called to tender the data and documents which were kept in the computers and printed out from the computers at L&S, Miri. These are contained in the volumes marked as BOD 1 to BOD 67 for the trial. Both PW2 and PW3 had testified that the computers and printers were at the material times in good working conditions and the documents were produced by the computers in the course of its ordinary use. PW3 had also produced a certificate under s 90A of the Evidence Act 1950 in respect of these documents. Numerous documents in these volumes were separately identified, referred to and cross-examined during the trial. Therefore I allowed the exhibits to be tendered, marked and used in the trial: see *Ahmad Najib bin Aris v Public Prosecutor* [2009] 2 MLJ 613.

[40] I have perused Appendix A, Appendix B and Appendix C, in particular the dates of the alleged transactions. I have also perused the daily attendance books kept at the L&S, Miri used by the receiving cashiers to record their daily attendances at the revenue collection section of L&S, Miri. On all those dates or transactions set out in Appendix A, B and C respectively, compared with the records in the daily attendance books from 1999 to 2001, the defendant was present and carrying out her duties as a receiving cashier on each of those dates except on 16 February 2000, 18 February 2000 and 8 June 2000. Therefore her testimony that she was carrying out duties in Kapit, Bintulu, Kota Samarahan and Limbang at the material times or on those dates could not be true.

[41] Although the defendant was present on those dates set out in Appendix A, Appendix B and Appendix C, except for the three dates on which the defendant was absent, was she responsible or did she committed those acts of misappropriation, concealment and had unlawfully retained those sums.

[42] The evidence showed that the transactions or collections referred to in Appendix A were acknowledged manually in handwriting and not machine-printed as required by L&S, Miri. Because these were not machine-printed and not officially recorded, these collections were not entered in the DCTR, not handed over at the end of the day and not banked in to the designated accounts of the plaintiff. These irregularities were discovered during the audit. In order to verify these transactions, the audit team requested the

landowners to produce their rent booklets. On examining the 73 booklets, all these transactions were acknowledged manually in handwriting. The audit team, with the assistance of PW1 and the other receiving cashiers, identified the handwriting in these receipts or acknowledgements in these rent booklets to be in the handwriting of the defendant.

[43] I have checked the transactions in Appendix A. For example, item 1 of Appendix A dated 4 April 2000 showed that a sum of RM1,703 for land rent was collected by the defendant. This payment was not machine-printed in the rent booklet but was acknowledged in handwriting, manually by her, bearing a receipt number 004125. This receipt number was not shown in the rent ledger for that day. Instead it was issued by the system and recorded in the DCTR on 13 January 2000 for a transaction carried out on 13 January 2000. This receipt number was taken and used by the defendant for the transaction in item 1 on 4 April 2000. By using a previous receipt number which was not authorised to be used on 4 April 2000, not machine-printed and which was not acknowledged in the DCTR on 4 April 2000, therefore this sum of RM1,703 was not shown in the DCTR. This sum collected by her was also not handed over to PW1 and not banked into the designated bank account of the plaintiff.

[44] I have checked these transactions and the entries made in the rent booklets, rent ledgers, DCTR and bank-in slips with the testimony of PW4. I agree with the findings of the audit carried out that it was the defendant who had collected these sums, kept these sums and did not hand them over to PW1 to be banked in. She had unlawfully retained these sums for her own use.

[45] The defendant denied she had issued the receipt or acknowledgements. She said she never gave any handwritten receipt for payment of land rents. The defendants submitted that the plaintiff must prove the handwitting of the defendant. However, she did not deny the handwritting in these receipt or acknowledgements to be in her handwritting. Although the other receiving cashiers were not called to testify in the trial, there was no evidence to contradict the findings made by audit that it was the defendants who has issued the handwritten receipts in respect of the transaction referred to in Appendix A. I have read the two submissions filed by the defendant. There was no specific complaint on the transactions set out in Appendix A except that she was absent on 16 February 2000.

[46] Similarly, I have checked the transactions and entries made in the rent booklets, rent ledgers, DCTR, posting list reports, adhoc update reports, bank-in slips and deletion transaction reports in respect of the transactions referred to in Appendix B. The land rents referred to were collected by the defendant and were acknowledged and machine-printed in the rent booklet but these payments were not recorded in the DCTR. Instead the defendant

recorded these transactions in the posting list reports or adhoc update reports or had deleted the transactions via the deletion transaction reports. Most of these collections were deleted and did not appear in the DCTR. Since these payments did not appear in the DCTR, she did not have to hand over these payments to be banked-in. By doing so she had deliberately concealed the payments collected by her.

[47] The defendant has complained that there were irregularities found in the revenue collection system and which were not detected by the audit. It was submitted that the audit was not accurate. The defendant has set out a list of these irregularities in a schedule annexed to the submissions of the defendant in encl 305. In fact these irregularities were detected and the plaintiff has amended Appendix B by deleting these transactions (see Appendix B as amended and annexed to the amended statement of claim). The plaintiff is not claiming that these transactions were carried out by the defendant. There is no basis for the defendant to complain.

[48] In respect of the transactions referred to in Appendix C, the land rents collected were acknowledged and machine-printed however only part of the payments received were recorded in the rent ledgers and DCTR. The balance or difference were not registered in the rent ledgers and DCTR. The defendant kept the difference. The defendant covered her tracks via the adhoc user update reports. Similarly, I have checked the transactions and entries and I agree with the findings of the audit in respect of Appendix C.

[49] Although the defendant testified that she did not know the passwords or ID of the other receiving cashiers including that of PW1 and that unknown persons instead had used her password or ID to make the transactions or altered or rectify the transactions, the evidence established that she knew and had copied the passwords and or ID of the other receiving cashiers and PW1 without their knowledge. This evidence contradicted her testimony as such and again raised doubts on her testimony and credibility.

[50] Bearing in mind she had copied the passwords or ID of the other cashiers without their knowledge and being well versed with the system, she had the opportunities to use their ID or her own ID to make these transactions so that she was not discovered to be responsible for these transactions. The audit found that it was the defendant who was responsible for these transactions, had concealed the transactions and unlawfully retained the sums collected by her. Based on the evidence before the court, there was nothing to contradict or had raised any doubts on the findings of the audit carried out that it was the defendant who was responsible for the unlawful transactions set out in Appendix A, Appendix B and Appendix C.

[51] However, based on the records in the daily attendance books, on 16 February 2000 the defendant was absent. She could not have collected and or kept the sum of RM 1,049.40 in item 108 of Appendix B. The daily attendance book did not register 18 February 2000 as a working day. None of the other cashiers had signed in for work on that day. The sum of RM968.30 in item 109 of Appendix B could not be collected by her or by anyone on that date. Similarly, on 8 June 2000, the defendant was absent and she could not have collected and or kept the sum of RM2,864.96 in item 25 of Appendix A. These sums could not be attributed to her and ought to be deducted from the amount of RM311,725.13.

[52] On the evidence before the court, the plaintiff has proved its case against the defendant beyond reasonable doubt and the defendant has not raised any reasonable doubt on the plaintiff's case against her. For the reasons given, judgment is entered for the plaintiff against the defendant for the sum of RM306,842.47 with interest thereon at 4% pa from 16 June 2011 and the defendant's counterclaim is dismissed. Costs of RM30,000 to the plaintiff.

Claim in the sum of RM306,842.47 allowed and counterclaim dismissed.

Reported by Ashok Kumar